

# Diners Club® Charge Card Cardmember Agreement

## Cardmember Agreement

This document and the card carrier that is sent with the card together make up your Card Agreement and throughout this document are referred to as **Agreement or Card Agreement**. The card carrier contains important account information including the amount of any membership fee. Please read and keep these documents for your records. This Agreement is binding on you unless you cancel your account within 30 days after receiving the card and you have not used or authorized use of your account.

To simplify this Agreement for you, the following definitions will apply. The words *you*, *your*, and *yours* mean all persons responsible for complying with this Agreement, including the person who applied to open the account and the person to whom we address billing statements. The word *card* means one or more cards or other access devices, such as account numbers, that we have issued to permit you to obtain credit under this Agreement. The words *we*, *us*, and *our* mean BMO Harris Bank N.A. formerly Harris N.A. and its successors and assigns, the issuer of your account. The words *authorized user* mean any person to whom you give permission to use your account.

## Using Your Account and Your Credit Line

The card must be signed to be used. Whether you sign the card or not, you are fully responsible for complying with all the terms of this Agreement, including the obligation to pay us for all balances due on your account as specified in this Agreement. Your card must only be used for lawful transactions and may not be used to purchase goods or services for resale.

Your card can be used to buy or lease goods or services wherever the card is honored. Your account has a credit limit. The full amount of the credit limit is available to use where the card is honored. With the Club Cash® feature, your card can also be used to obtain cash through any bank or automated teller machine that accepts the card, subject to your credit limit. Subject to applicable law, we may reduce your credit limit at any time. We will notify you of any new limit either by sending you a notice or through your billing statement. A change may take effect before you receive notification from us. You should always keep your total balance below the credit limit. However, if the total due goes over your credit limit you must still pay us.

## Additional Cards

You may request additional cards on your account for yourself or others and you may permit an authorized user to have access to the card or account number. However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. You must notify us to revoke an authorized user's permission to use your account. If you do so, we may close the account and issue a new card or cards with a different account number. You are responsible for the use of each card issued on your account according to the terms of this Agreement.

## Annual Membership Fee

The annual membership fee is \$95 for the primary card and \$35 for each additional card. The fee is non-refundable unless you notify us that you wish to cancel your account within 30 days from the mailing or delivery date of the billing statement on which the fee is billed.

## Billing

Your billing statement shows the total due, any interest charges and fees imposed during the billing cycle, and the payment due date. It also shows your current credit limit; an itemized list of current charges, payments and credits; an interest charge summary; and other important information. If we deem your account uncollectible or if we institute delinquency collection proceedings by sending it to an outside collection agency or attorney for collection, we may, in our sole discretion, stop sending you billing statements, unless otherwise prohibited by applicable law.

You must notify us of a change in your address by contacting Customer Service by telephone or mail. We will mail or deliver the billing statement to only one address.

## How We Determine the Balance

The total outstanding balance (the amount you owe us) appears as the "New Balance" on the billing statement. To determine the New Balance, we begin with the outstanding balance on your account at the beginning of each billing period, called the "Previous Balance" on the billing statement. We add any purchases and cash advances and subtract any credits or payments credited as of that billing period. We then add the appropriate interest charges and fees and make other applicable adjustments.

## Transaction Fee for Club Cash® Advances

You have obtained a cash advance for which we assess a cash advance transaction fee if you obtain funds from an automated teller machine (ATM), through home banking, or through a financial institution; make a wire transfer; acquire a money order, traveler's check, lottery ticket, betting or casino chip, or similar item; or engage in another similar transaction. For each cash advance, we add an additional charge of 4.0% of the advance, but not less than \$4. The amount of the cash advance may include a surcharge that the ATM owner imposes.

## Credit Balance

You may not maintain a credit balance in excess of your credit limit. We will return to you any credit amount over \$1.00 if the amount has been on your account longer than six months. You may request a refund of a credit balance at any time. We may reduce the amount of any credit balance by the amount of new charges billed to your account.

## Transaction Fee for Purchases Made in Foreign Currencies

For each purchase made in a foreign currency, we add to your account an additional fee of 3.0% of the amount of the purchase after its conversion into U.S. dollars.

## Information on Foreign Currency Conversion Procedures

Any purchase you make in a foreign currency or any cash advance you obtain in a foreign currency will be charged to your account in U.S. dollars after being converted by MasterCard®. MasterCard will act in accordance with its procedures then in effect. MasterCard uses a MasterCard conversion rate in effect on the day the purchase or cash advance transaction is processed. The MasterCard conversion rate is either a government-mandated rate or a wholesale market rate.

The foreign currency conversion rate in effect on the processing date for a transaction may differ from the rate in effect on the sale or posting date on your billing statement for that transaction. If a transaction is converted by a third party prior to that transaction being processed by MasterCard, the foreign currency conversion rate for that transaction will be the rate selected by that third party.

## Total Due

Each month you must pay the Total Due that is shown on your billing statement. Your Total Due equals the New Balance.

## Payments

You must pay the Total Due by the payment due date.

Instructions for making payments are on your billing statement. In order to be credited as of a particular day, your payment must be received in the form specified, and by the hour specified, in those instructions. Do not send cash payments. We can accept late or partial payments, as well as payments that reflect "paid in full" or other restrictive endorsements, without losing any of our rights under this Agreement. You agree to pay us in U.S. dollars drawn on funds on deposit in the United States using a payment check, similar instrument, or automatic debit that will be processed and honored by your bank. We reserve the right to accept payments made in foreign currency and instruments drawn on funds on deposit outside the United States. If we do, we will select the effective currency conversion rate at our discretion and credit your account in U.S. dollars after deducting any fees or costs incurred in connection with processing your payment. If such fees or costs are not fully deducted at the time your account is credited for a payment, we will bill you separately for them.

## Optional Payment Services

You may pay your account online or you may request to make your payment by phone using our optional telephone payment service. Subject to applicable law, each time a representative of ours helps expedite your payment, you agree to pay us \$14.95. Our representatives are trained to tell you this amount if you decide to use this optional telephone payment service.

## Late Fee

Any portion of the Total Due from a previous billing period that remains unpaid will appear as a Past Due balance on the current card billing statement. In addition, we will impose a late fee of up to \$35. If you do not pay a Past Due amount for two consecutive billing cycles we will assess a late fee of up to \$35 or 2.5% of the entire Past Due balance each time any portion of a Total Due balance is included in a Past

Due balance and the Past Due Balance is more than \$80. The fee will not exceed the amount permitted by applicable law.

## Returned Payment Fee

Subject to applicable law, we may add a fee of up to \$29 to the account when a payment check or similar instrument is not honored, when we must return it because it cannot be processed, or when an automatic debit is returned unpaid. At our option, we may assess this fee the first time your check or payment is not honored, even if it is honored upon resubmission. The fee will not exceed the amount permitted by applicable law.

## Other Fees

To the extent permitted by applicable law, your Account will be subject to the following fees:

- Research Documentation Fee: If you request a copy of a billing statement, sales slip or other documents in connection with your account, your account will be subject to a charge of \$3.00.

## Lost or Stolen Cards or Account Numbers

If any card or account number is lost or stolen, or if you think someone used or may use them without your permission, notify us at once by calling the Customer Service telephone number shown on the billing statement or the number obtained by calling toll-free or local Directory Assistance. We may require you to provide certain information in writing to help us find out what happened, and to comply with such procedures as we may require in connection with our investigation. Don't use the card or account number after we've been notified, even if they are found or returned. You may be liable for unauthorized use of the account, but not for more than \$50. You won't be liable for unauthorized purchases or cash advances made after we've been notified of the loss or the theft; however, you must identify for us the charges on the billing statement that were not made by you, or someone authorized by you, and from which you received no benefit.

## Default

You default under this Agreement if you fail to pay, by its due date, the Total Due listed on each billing statement; file for bankruptcy; pay by a check or similar instrument that is not honored or that we must return because it cannot be processed; pay by automatic debit that is returned unpaid; or default under any other Card Agreement that you have with us. If you default, we may, subject to applicable law, close your account and demand immediate payment of the total balance. For residents of New Hampshire: Reasonable attorneys' fees will be rewarded to you if you prevail in any action or suit brought by BMO Harris Bank N.A. Also, if you successfully assert a partial defense or counterclaim to an action brought by BMO Harris Bank N.A., the court may withhold from BMO Harris Bank N.A. the entire amount or such portion of the attorneys' fees as the court considers equitable.

## Preauthorized Charges

If you default, if the card is lost or stolen, or we change your account or account number for any reason, we may suspend automatic charges on that account to third party vendors for insurance premiums or other goods or services. If preauthorized charges are suspended, you must contact the third party vendor to reinstate them. You are responsible for making direct payment for such charges until you reinstate automatic charges.

## Collection Costs

If we refer collection of your account to a lawyer who is not our salaried employee, to the extent not prohibited by applicable law, you will be liable for any reasonable attorney's fees we incur, plus the costs and expenses of any legal action.

## ARBITRATION

**PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES.**

## Agreement to Arbitrate

Either you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called "Claims").

## Claims Covered

- **What Claims are subject to arbitration?** All Claims relating to your account, a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal

theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. A party who initiates a proceeding in court may elect arbitration with respect to any Claim advanced in that proceeding by any other party. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis.

- **Whose Claims are subject to arbitration?** Not only ours and yours, but also Claims made by or against anyone connected with us or you or claiming through us or you, such as a co-applicant or authorized user of your account, an employee, agent, representative, affiliated company, predecessor or successor, heir, assignee, or trustee in bankruptcy.
- **What time frame applies to Claims subject to arbitration?** Claims arising in the past, present, or future, including Claims arising before the opening of your account, are subject to arbitration.
- **Broadest interpretation.** Any questions about whether Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced. This arbitration provision is governed by the Federal Arbitration Act (the "FAA").
- **What about Claims filed in Small Claims Court?** Claims filed in a small claims court are not subject to arbitration, so long as the matter remains in such court and advances only an individual (non-class, non-representative) Claim.

#### How Arbitration Works

- **How does a party initiate arbitration?** The party filing an arbitration must choose one of the following two arbitration firms and follow its rules and procedures for initiating and pursuing an arbitration: American Arbitration Association or JAMS. Any arbitration hearing that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to your then current billing address, or at some other place to which you and we agree in writing. You may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association  
800-778-7879 (toll free) Website: [www.adr.org](http://www.adr.org)

JAMS  
800-352-5267 (toll free) Website: [www.jamsadr.com](http://www.jamsadr.com)

At any time you or we may ask an appropriate court to compel arbitration of Claims, or to stay the litigation of Claims pending arbitration, even if such Claims are part of a lawsuit, unless a trial has begun or a final judgment has been entered. Even if a party fails to exercise these rights at any particular time, or in connection with any particular Claims, that party can still require arbitration at a later time or in connection with any other Claims.

- **What procedures and law are applicable in arbitration?** A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten years experience or a retired or former judge, selected in accordance with the rules of the arbitration firm. The arbitration will follow procedures and rules of the arbitration firm in effect on the date the arbitration is filed unless those procedures and rules are inconsistent with this Agreement, in which case this Agreement will prevail. Those procedures and rules may limit the discovery available to you or us. The arbitrator will take reasonable steps to protect customer account information and other confidential information if requested to do so by you or us. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations, will honor claims of privilege recognized at law, and will have the power to award to a party any damages or other relief provided for under applicable law. You or we may choose to have a hearing and be represented by counsel. The arbitrator will make any award in writing and, if requested by you or us, will provide a brief statement of the reasons for the award. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute.
- **Who pays?** Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay, unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will

reimburse you for that fee. If there is a hearing, we will pay any fees of the arbitrator and arbitration firm for the first day of that hearing. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for requiring us to do so, or if you ask us and we determine there is good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

- **Who can be a party?** Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court. Claims, including assigned Claims, of two or more persons may not be joined or consolidated in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.
- **When is an arbitration award final?** The arbitrator's award is final and binding on the parties unless a party appeals it in writing to the arbitration firm within fifteen days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the same arbitration firm. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel is final and binding on the parties after fifteen days has passed. A final and binding award is subject to judicial review and enforcement as provided by the FAA or other applicable law.

#### Survival and Severability of Terms

This arbitration provision shall survive: (i) termination or changes in the Agreement, the account, or the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your account, or any amounts owed on your account, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the entire arbitration provision shall not remain in force. No portion of this arbitration provision may be amended, severed, or waived absent a written agreement between you and us.

#### Credit Reporting

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected on your credit report. If you request additional cards on your account for others, you understand that we may report account information in your name as well as in the names of those other people. We may also obtain follow-up credit reports on you (for example, when we review your account for a credit line increase). If you wish to know the names of the agencies we have contacted, write us at the Customer Service address listed on the billing statement. We will try to notify you by telephone or by mail of any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice. If you think we reported erroneous information to a credit reporting agency, write us at the Customer Service address listed on the billing statement. We will promptly investigate the matter. We will then tell you if we agree or disagree with you. If we agree, we will contact each credit reporting agency to which we reported and will request they correct the report. If we disagree with you after our investigation, we will tell you in writing or by telephone and instruct you how to submit a statement of your position to those agencies. Your statement will become a part of your credit record with them. As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

#### Telephone Monitoring and Recording

From time to time we may monitor and record your telephone calls regarding your account with us to assure the quality of our service.

#### Closing Your Account

You may close your account at any time by notifying us in writing or over the phone. However, you remain responsible to pay the total balance according to the terms of this Agreement. We may close your account or suspend your account privileges at any time for any reason not prohibited by applicable law without prior notice. We may also reissue a different card or account number at any time. You must return the card to us upon request.

#### Refusal of the Card

We are not responsible if a transaction on your account is not approved, either by us or by a third party, even if you have sufficient credit available. We may limit the number of transactions that may be approved in one day. If we detect unusual or suspicious activity on your account, we may suspend your credit privileges until we can verify the activity.

#### Changing this Agreement

**We may change the rates, fees, and terms of this Agreement from time to time as permitted by law. Changing terms includes adding, replacing, or deleting provisions of this Agreement. These changes are binding on you. Subject to applicable law, we will give you advance written notice of the changes and a right to opt out to the extent required by law.**

#### Enforcing this Agreement

We can delay in enforcing or fail to enforce any of our rights under this Agreement without losing them.

#### Assignment

We may assign any or all of our rights and obligations under this Agreement to a third party.

#### Applicable Law

The terms and enforcement of this Agreement shall be governed by federal law and the law of Illinois, where we are located. This Agreement and your account are governed by, to the extent that state law applies, the law of Illinois without regard to its conflict of law principles. Further, this Agreement is made in Illinois and credit is extended to you from Illinois, regardless of where you live or use your account.

For Maryland residents only, to the extent federal law and the laws of the State of Illinois do not apply, this Agreement is governed by Title 12, Subtitle 9 of the Maryland Commercial Law Article.

#### New Jersey Residents

Because certain provisions of this Agreement are subject to governing law, they may be void, unenforceable or inapplicable in some jurisdictions. None of these provisions are void, unenforceable or inapplicable with New Jersey.

#### Your Billing Rights: Keep this Document for Future Use

**This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act**

#### What To Do If You Find a Mistake On Your Statement

If you think there is an error on your statement, write to us at the address for billing inquiries and correspondence shown on the front of your statement.

In your letter, give us the following information:

- **Account information:** Your name and account number.
- **Dollar amount:** The dollar amount of the suspected error.
- **Description of problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

#### What Will Happen After We Receive Your Letter

**When we receive your letter, we must do two things:**

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

#### While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your revolving credit limit.

**After we finish our investigation, one of two things will happen:**

- **If we made a mistake:** You will not have to pay the amount in question or any interest or other fees related to that amount.
- **If we do not believe there was a mistake:** You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within **10 days** telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

**Your Rights If You Are Dissatisfied With Your Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at the address for billing inquiries and correspondence shown on the front of your statement.

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

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